

1 Whereupon,

2 HOWARD BARR

3 was called as a witness and having been duly
4 sworn, was examined and testified on his oath as follows:

5 MR. GUTMANN: Excuse me, Your Honor. If I might
6 render an appearance on behalf of the witness, Mr. Barr,
7 Peter Gutmann of Pepper & Corazzini

8 JUDGE SIPPEL: Thank you, Mr. Gutmann. Yes,
9 again, I remember you from our last session when Mr. Barr
10 testified.

11 MR. GUTMANN: Thank you.

12 JUDGE SIPPEL: Okay, Mr. Beckner.

13 MR. BECKNER: I'm letting the witness have his
14 water first.

15 THE WITNESS: I'm ready.

16 MR. BECKNER: Ready?

17 THE WITNESS: Yes.

18 MR. BECKNER: All right. Your Honor, can we have
19 Mr. Barr have a look at TW/CV Exhibit 50 which I think
20 should be in a notebook -- not the thing notebook, but the
21 fat notebook.

22 JUDGE SIPPEL: Is that 50 or 51?

23 MR. BECKNER: I think it's 50, Your Honor. It's
24 the 14 inch handwritten notes, the long format.

25 JUDGE SIPPEL: I guess that's it. His handwritten

1 notes?

2 MR. BECKNER: I think they've been previously
3 identified in a declaration.

4 JUDGE SIPPEL: That's correct. They are received
5 in evidence as TW/CV 50.

6 MR. BECKNER: Okay.

7 DIRECT EXAMINATION

8 BY MR. BECKNER:

9 Q Mr. Barr, just to confirm, you're now looking at
10 what's been marked and admitted as Exhibit 50, TW/CV
11 Exhibit 50. Is this in fact a copy of handwritten notes
12 that you made?

13 A Yes.

14 Q Okay. And do you recall, can you tell us
15 generally what these notes reflect?

16 A A phone conversation I had with Lloyd Constantine.

17 Q Okay. Do you know when the conversation took
18 place?

19 A It was in June of '95 if I recall.

20 Q Was it June 22nd, the date?

21 A That sounds fair.

22 Q Okay. I think you had previously identified these
23 notes in a declaration which did give the date. As far as
24 you know, is the declaration correct on the date?

25 A Yes.

1 Q Okay. Generally, what's the substance of the
2 conversation that's reflected in these notes? I'm not
3 asking you to read the thing from top to bottom. Just
4 generally tell us what it was about.

5 A The licensing of paths to connect buildings.

6 Q Okay. The top line appears to read thinks there
7 are an additional four buildings for which no license has
8 been issued. And then there's some addresses. Can you tell
9 us what that refers to?

10 A This is information that Lloyd conveyed to me in
11 our conversation.

12 Q Were these four addresses, four addresses that he
13 had identified that he thought they were, they were
14 operating but unlicensed, is that right?

15 A It could be. I'm not sure if those are -- sitting
16 here today, I'm not sure if those are the four buildings
17 that he was talking about, though it seems likely.

18 Q Do you know of any other reason why these
19 particular four buildings would be identified in this
20 particular set of notes?

21 A No.

22 Q Okay. Now, near the bottom of the page there's
23 some writing that appears to say send Lloyd a copy of
24 Jennifer's April 20, 1993 letter. Did I read that
25 correctly?

1 A Yes.

2 Q Okay. Was that a note that you wrote to yourself?
3 Or was that a request that was made to you by
4 Mr. Constantine in the phone call?

5 A I believe it was a request Mr. Constantine made.

6 Q At the time that he made the request did you have
7 any idea of what the letter was that he was referring to?

8 A As I sit here today, I really don't know.

9 Q In the conversation, did he indicate to you that
10 he had seen the letter?

11 A I really don't recall contextually the
12 conversation that surrounds his request.

13 Q Did he indicate to you that -- strike that. I
14 take it from your testimony though that Mr. Constantine had
15 found out about this letter from someone other than you, is
16 that correct?

17 A I'm really not sure.

18 Q Well, did you volunteer to him in this call -- did
19 you volunteer telling him about this particular letter?

20 A I don't recall.

21 Q Do you know what the relationship if any was
22 between this April 20th letter and the subject of your phone
23 call with Mr. Constantine?

24 MR. SPITZER: Do you mean relationship from whose
25 perspective or -- I'm not sure I understand the question.

1 JUDGE SIPPEL: Can you clarify that a little bit,
2 Mr. Beckner?

3 MR. BECKNER: Sure.

4 BY MR. BECKNER:

5 Q In the conversation, did either you or
6 Mr. Constantine express how this letter identified here, the
7 April 20th letter, related to the subject of the
8 conversation which was these apparent four unlicensed
9 operating paths.

10 A Again, I really don't recall in great detail the
11 substance of the conversation beyond what's recorded in the
12 notes. Nor can I speak to what Mr. Constantine had on his
13 mind.

14 Q Well, no. I'm not asking you what he had on his
15 mind. I'm asking you what he may have told you.

16 A I really don't recall.

17 Q Okay. As of the time of this conversation, Do you
18 know whether or not you had seen Ms. Richter's letter of
19 April 20th?

20 A I'm really not sure if I had or hadn't.

21 Q Okay. Did you in fact send Mr. Constantine a copy
22 of this letter as was requested?

23 A I believe I did, yes.

24 Q Okay. Before you sent the letter did you read it?

25 A It's possible, but I really don't recall.

1 Q Before you sent, well, let's strike that. After
2 you sent the letter, did you discuss it with anyone?

3 A Again, it's possible, but I don't have a specific
4 recollection.

5 Q Did you discuss the letter with Ms. Richter after
6 you sent it to Mr. Constantine?

7 A Again, it's possible, but I don't really
8 specifically recall.

9 Q Did the letter -- well, strike that. Let's take a
10 look at, since you have the book there, TW/CV 51.

11 A Do I need this anymore?

12 Q Why don't you keep it there if you don't mind?

13 JUDGE SIPPEL: Here's 51.

14 BY MR. BECKNER:

15 Q Okay. If you would turn to the complete copy of
16 the letter that's part of 51, that is the copy that doesn't
17 have the left margin chopped on it. And it also doesn't
18 have the handwriting on the first page.

19 A So you'd be starting with FCC/CP 017983?

20 Q Correct. Do you recognize this as a copy of the
21 letter you sent to Mr. Constantine?

22 A It appears to be, yes.

23 Q Okay. Is 1808, is that a designation used by your
24 firm to identify a file or a client number?

25 A Right. That's Liberty's client number.

1 Q Okay. So the particular copy of this letter that
2 we're looking at now came from your firm's files, is that
3 correct?

4 A Yes.

5 Q Okay. Did this letter give you any concern that
6 Liberty might have activated microwave facilities without
7 authorization some time in 1993?

8 MR. SPITZER: Your Honor, objection. What
9 timeframe?

10 JUDGE SIPPEL: He said some time in 1993.

11 MR. SPITZER: No, did it give the witness concern
12 in 1995 when he faxed it to Mr. Constantine at some other
13 tim?

14 JUDGE SIPPEL: Yes, if that's an objection, I'll
15 sustain it for that clarification, purposes of
16 clarification.

17 BY MR. BECKNER:

18 Q Okay. Mr. Barr, I'm questioning you now about
19 what you thought or remembered or knew or believed in 1995.
20 Immediately before or immediately after you sent this letter
21 to Mr. Constantine.

22 MR. SPITZER: Your Honor, my objection now is that
23 I believe that the sole purpose for this portion of the
24 hearing is to focus on knowledge at or about the time of
25 April, 1993. I think we have had rather extensive

1 discovery, depositions and testimony about the April through
2 June period of 1995.

3 JUDGE SIPPEL: Well, he hasn't, you know,
4 Mr. Beckner didn't have a chance to ask this witness the
5 last time he was on the stand about the Richter letter. And
6 I'm not going to say who's fault that was, but it sure
7 wasn't Mr. Beckner's fault.

8 MR. SPITZER: Withdraw the objection then, Your
9 Honor.

10 JUDGE SIPPEL: So, I'm going to overrule that
11 objection and let Mr. Beckner go ahead.

12 BY MR. BECKNER:

13 Q Okay. Again, I want to preface the question,
14 Mr. Barr so that you understand the timeframe I'm referring
15 to when I ask these questions. I'm asking about what you
16 knew or you thought or you believed or were concerned about
17 in the period 1995 immediately surrounding the time when you
18 sent this April 20th, '93 letter to Mr. Constantine. And
19 the question I wanted to ask you was whether or not you were
20 concerned at that time that this letter might indicate that
21 Liberty had operated unlicensed facilities in 1993?

22 A I think I recall being pleased that Jennifer had
23 said in no uncertain terms what's required before you can
24 operate a path and that's the primary focus of the letter as
25 I see it.

1 Q Okay. So I take it from your answer that you do
2 recall at some point in 1995 reading this letter, is that
3 right?

4 A I'm sure I must have.

5 Q Okay. And if you read the letter, were you at all
6 concerned at the time you read it about the statement that
7 Ms. Richter wrote, "some things were revealed during these
8 conversations that gave both Behrooz and I pause" and the
9 following statements in that paragraph? Did that give you
10 any concern at all?

11 A Again, I don't recall any great concern over that.
12 I read it more the other way as her explaining what Liberty
13 needed to do. And also, there was little I could do at that
14 point about what might or might not have happened in '93.

15 Q Well, would you, in that period that I'm referring
16 to have been concerned --

17 A Which period?

18 Q The time in 1993 when you sent Mr. Constantine a
19 copy of this letter. Would you have been concerned about
20 evidence coming forward that would show that the statement
21 that was made in the surrepley which you drafted that
22 Liberty's pattern and practice had been to allay the grant
23 of either an application or request for STA prior to making
24 the path operational, that that statement might in fact not
25 be correct.

1 MR. SPITZER: Your Honor, I'll make an objection.
2 What might or might not have concerned him is it relevant
3 what he knew or believed or thought about premature
4 activation is relevant.

5 JUDGE SIPPEL: Well, I'm going to overrule that
6 objection. It's his cross examination. If you want to
7 clean that up on redirect, that's your prerogative.

8 THE WITNESS: You're going to have to restate the
9 question.

10 BY MR. BECKNER:

11 Q Okay. When you read the first paragraph of
12 Ms. Richter's letter -- I'll strike that. Did Ms. Richter's
13 letter give you any concern that the statement that Liberty
14 made in the surreply which you wrote that its pattern and
15 practice had been to allay the grant before making the path
16 operational? That that statement might in fact not be true.

17 A I don't really recall having that concern.

18 Q Okay. And I take it that you recall your reaction
19 to this letter as generally being one that we would call
20 positive, that you thought it was good that the firm had
21 informed Liberty clearly of what the rules permitted and
22 didn't permit?

23 A Yes.

24 Q Now, before April 22nd, 1995, did you have any
25 knowledge that Liberty was or had operated microwave

1 facilities without authorization to do so?

2 MR. SPITZER: I'm sorry, April 22nd?

3 MR. BECKNER: Yes.

4 MR. SPITZER: '95?

5 MR. BECKNER: Yes.

6 MR. SPITZER: I'm sorry, do you mean April 22 or
7 April 27th?

8 MR. BECKNER: April 22, 22nd.

9 MR. SPITZER: 22.

10 MR. BECKNER: Yes.

11 MR. SPITZER: Okay. It's your question. I'm
12 sorry, I don't mean to interrupt.

13 MR. BECKNER: I'm sorry, I'll withdraw the
14 question.

15 BY MR. BECKNER:

16 Q Before April 27th. There was an error that was
17 fixed and I read the error instead of the repair. Before
18 April 27th, 1995, Mr. Barr, did you have any knowledge that
19 Liberty was operating or had operated microwave facilities
20 without proper authorization to do so?

21 A I believe April 27th, 27, was the date that I
22 first learned that Liberty was operating some paths without
23 authorization.

24 Q Okay. And before that time, you didn't have such
25 knowledge, correct?

1 A Correct.

2 Q Before that time, in your mind was there even a
3 possibility that Liberty might have or might be operating a
4 microwave facility without proper authorization?

5 A Anything's possible, Mr. Beckner.

6 Q I know anything's possible, but I'm asking in your
7 mind was there an inkling, a possibility, a hint, a
8 suspicion?

9 A No.

10 Q Does Exhibit 51, that's the April 20th letter from
11 Jennifer Richter, does that suggest to you such a
12 possibility as you look at it now?

13 A I suppose one could read that into it if one
14 wanted to.

15 Q Whenever, well, strike that. I take it you don't
16 recall reading that letter before the time when you and
17 Mr. Constantine were discussing on the telephone which was,
18 we've established, in June of 1995, is that correct?

19 MR. SPITZER: I --

20 THE WITNESS: I didn't understand that.

21 MR. SPITZER: Yes, that question is ambiguous.

22 JUDGE SIPPEL: I'll sustain the objection.

23 BY MR. BECKNER:

24 Q Do you have any recollection of reading
25 Ms. Richter's April 20, 1993 letter before the time that you

1 and Mr. Constantine were discussing that letter on the
2 telephone which we've established was in June of 1995?

3 A No, I don't recall when I first saw this.

4 Q All right. Now, do you recall in this proceeding
5 making a correction or a clarification to your testimony in
6 the hearing transcript which said that you want to clarify
7 that you were referring to the January to April 1995 time
8 period?

9 A Yes.

10 Q Okay. Can you tell us why you wanted to make that
11 correction or clarification?

12 A Well, in my mind, those were the dates that the
13 question referred to in retrospect as I was reading the
14 transcript, the question appeared to be broader than my
15 understanding and I just wanted to make it plain that the
16 period of time that I was focusing on.

17 Q Would the breadth or narrowness of that question
18 you're referring to make any difference in how you answer?

19 A No.

20 Q I'd like you to take a look if you would at TW/CV
21 Exhibit 61. That's in the thing notebook that's in front of
22 you. It's Tab 10 in the notebook.

23 A I'm sorry, it's Tab 10.

24 Q Ten in the notebook.

25 A I don't see anything identifying it as 61. Is

1 it --

2 Q Well, there won't be anything on that thing that's
3 identified at 61.

4 JUDGE SIPPEL: Why don't you just direct him to
5 the identity of the document? It's a billing statement from
6 Pepper & Corazzini, dated May 10, 1993

7 MR. BEGLEITER: Your Honor, it has a Bates stamp
8 number.

9 MR. BECKNER: Bates stamp number FCC CP 018040 on
10 the first page and 42 on the last page.

11 BY MR. BECKNER:

12 Q Is that the document you have in front of you?

13 A Yes.

14 Q All right. Do you recognize that as a copy of a
15 Pepper & Corazzini bill?

16 A Yes.

17 Q Okay. If you turn to the second page of the bill,
18 there are three time entries at the end beside the initial
19 HJB. Is that, would that be you?

20 A Yes.

21 Q And the activity indicated there is draft STA
22 requests. Is that, does that reflect the time entry that
23 you made?

24 A For April the 29th, yes.

25 Q Okay. There's no entry for April 28th, but

1 there's 3 1/4 hours billed. Do you have any idea why
2 there's no narrative description there?

3 A I think there was an error on my part.

4 Q Okay.

5 JUDGE SIPPEL: Has that been double checked to be
6 sure that wasn't inadvertently redacted or something?

7 MR. BEGLEITER: Yes, Your Honor.

8 MR. SPITZER: Yes, Your Honor.

9 JUDGE SIPPEL: Okay. The reason I asked that
10 question is because there's redacted notations on other
11 portions of this page.

12 MR. SPITZER: That's specific inquiry was made

13 JUDGE SIPPEL: Okay. We've confirmed it. Go
14 ahead, Mr. Beckner.

15 BY MR. BECKNER:

16 Q Did you discuss these STA requests with
17 Ms. Richter at all while you were preparing them?

18 A I don't really recall.

19 Q Okay. Do you recall whether or not as part of
20 your -- strike that. During the period covered by this
21 bill, I take it that you were not active on the Liberty
22 account, is that true?

23 A Yes.

24 Q Okay.

25 A Not on a regular basis.

1 Q Excuse me?

2 A Not on a regular basis. That's true.

3 Q And would you have in preparation for doing these
4 STA requests, would you have reviewed some of the Liberty
5 file to bring yourself back up to speed?

6 A It's possible, but I really don't recall what I
7 did in preparation of these. This was four years ago.

8 Q Well, I'm asking -- maybe you can answer on the
9 basis of what your customary practice is.

10 A I didn't customarily do STA requests for Liberty.
11 So I can't say as to what my custom, you know, might or
12 might not have been.

13 Q So I take it you can't say whether or not you
14 might have reviewed a correspondence file for Liberty during
15 this period as part of your preparation to do STA requests?

16 A I don't know whether I did or not.

17 Q Okay. Now, Ms. Richter's April 20th letter refers
18 to STAs in the concluding paragraph. Do you know whether or
19 not she discussed the substance of that at all?

20 MR. SPITZER: Are you now on Exhibit 51?

21 MR. BECKNER: Yes.

22 JUDGE SIPPEL: The witness has that in front of
23 him. Why don't you read that paragraph to yourself?

24 BY MR. BECKNER:

25 Q And, Mr. Barr, I'm only asking about the STA part,

1 not about the experimental license.

2 A So, just the first sentence.

3 Q Yes, that's correct.

4 A Right. She does mention the possibility of
5 applying for an STA.

6 Q The question was do you remember whether or not
7 you discussed that with her at about the time of this letter
8 or prior to your work on the STAs at the end of April '93.

9 A Discussed them?

10 Q Discussed the content of her letter to the extent
11 that it has to do with STAs.

12 A I don't really recall discussing the content of
13 this letter with her back then, no.

14 Q Okay. Looking at page two of the bill and the
15 time entry that's not identified by any narrative for
16 3 1/4 hours, from what is here, can you infer at all
17 anything about what you did during the 3 1/4 hours you
18 indicated you spent on the Liberty account on April 28th?

19 A It's likely it had something to do with the
20 preparation of STA reports.

21 Q But that's as far as you can --

22 A That's all I can glean from this, yes.

23 MR. BECKNER: Okay. Nothing further at this time,
24 Your Honor.

25 JUDGE SIPPEL: All right. Mr. Weber.

1 CROSS EXAMINATION

2 BY MR. WEBER:

3 Q I'd like you to continue looking at that same page
4 Mr. Beckner was questioning you on which is the Time-Warner
5 or TW/CV Exhibit 61 which is Tab 10 in your book and on the
6 second page. I believe you just said that the 4/28 entry
7 which has no narrative. And you said the best you could
8 decipher was it probably had something to do with the STAs.
9 If you look at the entry right above that one, there's
10 another 4/28 entry in which Ms. Richter had a phone call
11 with Mr. Price about STAs. And then it goes on to review
12 materials for Mr. Barr or Howard Barr. Can you recall or
13 would this refresh your recollection whether or not you had
14 a discussion with Ms. Richter on the 28th of April, 1993
15 regarding STAs?

16 A It's likely that we did have a conversation about
17 STAs, yes. About the preparation of the STAs that I think
18 it shows on the 29th and the 30th.

19 Q Can you recall in that same timeframe if you had
20 any telephone conversations with Mr. Price?

21 A I really don't recall.

22 Q Do you know if by chance you could have been
23 brought in on that same call with Ms. Richter?

24 A Again, anything's possible. I don't think that I
25 was. Again, I don't have any kind of, well, my entry for

1 the 28th is absent, but I really don't recall.

2 Q At this point, how many years senior to
3 Ms. Richter were you if you can recall?

4 A I think four.

5 Q Do you know if there was a reason why you prepared
6 the STA requests instead of Ms. Richter preparing the STA
7 requests?

8 A I have a faint recollection that she was going out
9 of town and needed someone to help her out.

10 Q It wasn't based upon Liberty wanting a more senior
11 attorney to handle it?

12 A No. I don't really think anyway.

13 Q Was this the first time you did STA requests for
14 Liberty?

15 A I couldn't say.

16 Q I'd like to go back to your clarification of your
17 hearing transcript again briefly. And I believe you
18 testified today, you just wanted to make it clear that you
19 were talking about just that one narrow timeframe to what
20 could have been a broader question. My question is if the
21 answer would have been the same regardless of whether it was
22 a broad question or a narrow question, why did you feel the
23 need to narrow the question?

24 A For purposes of clarity. There was no nefarious
25 purpose.

1 Q I'm not saying there was a nefarious purpose. I'm
2 just, I'm not sure why there was a purpose. Why was there
3 need to clarify if the answer would be the same whether it's
4 broad or narrow?

5 A Again, merely for purposes of clarity. It's
6 something on my mind when the question was posed, I read it
7 later and said, oh. That question might have been much
8 broader than the timeframe that I was thinking about that I
9 had been directed towards. And I made the clarification.

10 Q Now, I believe you made it clear that you knew of
11 no actual instance so of unauthorized operation prior to
12 April, '95, correct?

13 A Right.

14 Q Prior to April of 1995, were you aware of any
15 concerns of unauthorized operation?

16 A Not that I can recall, no.

17 Q Can you recall whether prior to April of 1995 the
18 issue was discussed amongst either people in Pepper &
19 Corazzini or between Pepper & Corazzini and Liberty of the
20 possibility of unauthorized operations?

21 A Not to my recollection, no.

22 Q After the issue concerning your clarification was
23 first raised, did you convey what you're conveying to us now
24 to Liberty's other counsel?

25 MR. SPITZER: Your Honor, I have to interpose an

1 objection. I've tried to be as open as possible in terms of
2 privilege, but I'm not, I at least have to object on the
3 grounds of privilege on that.

4 JUDGE SIPPEL: What are you looking to get at,
5 Mr. Weber? Are you trying to find out what he was talking
6 to Mr. Constantine about?

7 MR. WEBER: Actually, if we could have a
8 discussion off the record without the witness in the room.

9 JUDGE SIPPEL: Yes, all right. We'll do that.
10 Let's go off the record.

11 (Whereupon, a brief recess was taken.)

12 MR. WEBER: This is a rather I guess sticky
13 position for the Bureau to be in right now that we had
14 discussions with Mr. Spitzer and Mr. Begleiter regarding
15 this issue and it was an off the record discussion. And
16 certain things were brought up that Mr. Barr may have said.
17 And I'm just trying to get to that and not wanting to
18 completely violate what was said between us off the record.
19 However, I'm trying to just get around to those issues.

20 MR. SPITZER: Those conversations were
21 confidential, Mr. Weber.

22 MR. WEBER: Right. I know. And that's why I'm
23 not hitting them directly.

24 MR. SPITZER: Let me say this because I was not
25 here --

1 JUDGE SIPPEL: Do you want me to -- do you want to
2 talk about this while I go outside the room? Do you want to
3 talk about this amongst yourselves before I get more into
4 this?

5 MR. SPITZER: I'm not sure that would be fruitful.
6 I mean, I was not present to that conversation. I know
7 there was an off the record conversation, but it strikes me
8 first on grounds of relevance. I'm not sure that it is
9 pertinent. Again, you have had full latitude to inquire of
10 Mr. Barr what he meant by his clarification. And again,
11 without waiting the privilege, we cannot permit them to
12 answer a question about what he may or may not have told us
13 in our capacities counsel for Liberty in our mutual
14 representation of the company.

15 JUDGE SIPPEL: Was it trial preparation? Is that
16 the basis that you're --

17 MR. SPITZER: Yes, Your Honor.

18 JUDGE SIPPEL: He said he disclosed something to
19 you for trial preparation purposes.

20 MR. SPITZER: That's correct.

21 JUDGE SIPPEL: And how did that information get to
22 you?

23 MR. WEBER: It was, it just made it a confidential
24 off the record statement concerning what we would be filing
25 in our comments before Your Honor. I mean, I'll go ahead

1 and withdraw the question.

2 JUDGE SIPPEL: Well, I'm trying to -- no.

3 Because, look. If this is trial preparation material and it
4 was disclosed to you, I want to know for what purpose. And
5 so far the only thing you've told me it had something to do
6 with your comment. So this was told to you before you filed
7 your comment.

8 MR. WEBER: That is correct.

9 JUDGE SIPPEL: And what purpose would that have
10 with respect to your comments? As to whether or not you
11 would choose to disclose it in your comments?

12 MR. WEBER: Obviously, I can't speak to why it was
13 disclosed. I mean, the impression I got of the purpose of
14 the discussion was just to see what side the Bureau would be
15 taking on its comments.

16 JUDGE SIPPEL: But what does the disclosure of
17 Mr. Barr to Liberty's counsel have to do with that?

18 MR. WEBER: Well, obviously --

19 JUDGE SIPPEL: But that's not what it is I guess.

20 MR. WEBER: Like I say, one of the main issues in
21 Time-Warner's motion was Mr. Barr's clarification of his
22 hearing transcript and therefore it was conveyed to us in
23 part what Mr. Barr has had to say about the clarification of
24 his hearing transcript.

25 JUDGE SIPPEL: Well, why don't you want to testify

1 to that? You know, I keep getting the feeling I'm getting
2 the rug pulled out from under me.

3 MR. SPITZER: No, I mean, no. I wasn't even
4 present at this conversation, but I just in the context of
5 waiving privileges am loathe to permit an inquiry about a
6 comment that Mr. Barr may have made to us in preparation for
7 and in fact at the deposition, there was similar inquiry
8 made by Ms. Powers, not directly, not identical question.
9 But at the end I objected on the basis of privilege and
10 there was no issue about it. I think it was exceeded --
11 recognized that the answer sought was privileged. And
12 therefore, it would be a matter that was not pursued.

13 JUDGE SIPPEL: Well, what prompted you then to
14 raise the question here today?

15 MR. WEBER: I just wanted to I guess just to see
16 where I would get with the witness on the question.

17 JUDGE SIPPEL: Well, it sounds to me like you're
18 not satisfied that you're getting a full story from the
19 witness in your cross examination. That's what it sounds
20 like to me. And it becomes doubly of concern to me when
21 you're joining in the same relief as Liberty is on -- it's
22 leaving me not only in the dark, but very concerned. And
23 this does come up. I mean, we obviously have come up darn
24 close to a waiver if not there.

25 I mean, how can you sit -- how can you tell him

1 what you want to tell him or have him know what you want him
2 to know for purposes of drafting a pleading and yet you're
3 arguing that it's not waived because it's trial preparation?
4 I'm having a difficult time conceptually wrestling with this
5 issue. I'm going to permit you to ask the question again of
6 this witness. I want to hear what the witness says. Let's
7 go off the record and bring the witness in.

8 (Whereupon, a brief recess was taken.)

9 JUDGE SIPPEL: All right. We're back on the
10 record. I'll tell you in general, Mr. Barr, that what we've
11 been discussing off the record is protective nature of
12 disclosures that have been made to the Bureau counsel about
13 comments that you made to Liberty's counsel, specifically
14 Mr. Begleiter with respect to -- and it all relates to the
15 correction that you filed with respect to the testimony.
16 Just to let you know what the subject matter was. I'm going
17 to permit Mr. Weber to again frame the question to you and
18 then I will hear from, I'll let the objection come on the
19 record and I'll make a ruling.

20 BY MR. WEBER:

21 Q After the issues were raised concerning your
22 clarification of your hearing transcript, is the information
23 you conveyed to the Constantine attorneys regarding the
24 basis for your clarification the same as what you're
25 conveying to us here today?